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International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

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Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families

List of issues prior to submission of the initial report of the Niger*

The Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, at its fourteenth session (A/66/48, para. 26), established a procedure which consists in the preparation and adoption of a list of issues to be transmitted to the State party concerned prior to the submission of its report. The replies of the State party to this list of issues will constitute its report under article 73, paragraph 1, of the Convention. In accordance with General Assembly resolution 68/268, paragraph 16, the periodic report should not exceed 21,200 words.

A list of issues may also be transmitted to a State party in cases where the Committee decides to examine the implementation of the Convention in the absence of a report, in accordance with rule 31 bis of the provisional rules of procedure (A/67/48, para. 26).

Part I

Under this section, the State party is invited to submit its responses to the following questions.

A. General information

1. Please provide information on the domestic legal framework relevant to the Convention, in particular on:

(a) The rank of the Convention in domestic law and whether the Convention has direct effect or is incorporated in domestic law to ensure its application;

(b) National legislation of the State party relevant to the protection of migrant workers and members of their families under the Convention;

* The present text contains only paragraphs 9 to 34 of the Committee's draft list of issues.

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(c) Measures taken by the State party to bring its legislation into line with the provisions of the Convention, in particular Ordinance No. 81-40 of 29 October 1981 and its implementing decree No. 87-075 regulating the conditions of entry, residence and employment of foreigners;

(d) The existence and scope of bilateral and multilateral agreements with other countries concerning protection of the rights of migrant workers and members of their families in accordance with the principles of the Convention, in particular with the member States of the Economic Community of West Africa (ECOWAS), Libya, Algeria, Morocco, Tunisia, France and Italy. Please state how far these agreements protect the rights of migrant workers in the transit and destination countries, with particular regard to detention, repatriation/expulsion and family reunification procedures. Please also provide information on the steps taken to strengthen the protection of migrant workers of Niger nationality.

2. Please provide information on the policies and strategies relating to the rights of migrant workers and members of their families adopted by the State party. Please specify the measurable objectives and deadlines that the State party has set to monitor effectively the progress made in implementing the rights of migrant workers and members of their families, and provide information on the resources allocated to realizing those rights and on the results already achieved and those expected.

3. Please provide information on the government ministry or institution responsible for intergovernmental coordination of the implementation of the Convention in the State party, including information on the available staffing and resources as well as monitoring activities and follow-up procedures.

4. Please provide information, including qualitative information and statistical data, disaggregated by sex, age, nationality and migration status, on labour migration flows into and from the State party, on returns, on other labour migration-related issues and on children abandoned by their migrant parents. Please also provide qualitative and statistical data or, if precise data are not available, studies or estimates on migrant workers in an irregular situation in the State party or abroad, in particular those working in less regulated sectors such as agriculture, mining industry and domestic services. Please additionally provide information on measures taken by the State party to establish a coherent and cross-comparable system for collecting data on these issues and making it public.

5. Please provide detailed information on the mandate of the Niger's National Human Rights Commission, including the human, technical and financial resources allocated to it. In particular, please indicate whether the Commission's mandate is in conformity with the Paris Principles (see General Assembly resolution 48/134 annexed hereto), placing special emphasis on efforts to strengthen its finance and institutional independence while specifying whether its mandate includes specific treatment of the rights of migrant workers and their families in accordance with the principles set out in the Convention. Please provide detailed information on activities aimed at the general public, and migrant workers in particular, whether living in urban or rural areas, to inform them about the services offered by this institution, including current appeal procedures, complaint mechanisms, helplines and other services offered. Lastly, please state whether the Commission's mandate provides for visits to detention centres for migrants and other care centres for migrants of Niger nationality repatriated/expelled from their countries of employment or transit.

6. Please provide detailed information on measures taken to promote and disseminate the Convention and to promote awareness and understanding of its provisions to the general public, migrant workers and members of their families, employers, teachers, health professionals, embassy/consular personnel and relevant officials, including law enforcement officers, border police and members of the judiciary. Please also describe the

steps taken by the State party to establish training programmes on the rights of migrant workers and members of their families, to include gender mainstreaming and children's rights, for officials with responsibility for migration questions.

7 Please provide information on the cooperation of the State party with human rights organizations and civil society organizations working on migrants' rights in relation to the implementation of the Convention and indicate how far they have been involved in the preparation of replies to the present list of issues. Please also state how they have been involved in promotion of the Convention.

8 Please state whether private employment agencies in the State party recruit migrant workers to send them to work abroad and, if so, please give information on the laws and regulations applicable to private recruitment, and in particular:

(a) Measures taken to provide information and training to migrant workers on their rights and obligations, as well as to protect them against abusive employment situations;

(b) The role and responsibilities of recruiters and their potential joint liability with the employer for claims and liabilities that may arise in connection with the implementation of the employment contract, including wages, disability compensation, death and repatriation;

(c) Information on the issuing and renewal of licences by such private employment agencies;

(d) Information on complaints against agencies and inspections, as well as penalties and sanctions for non-compliance with the regulations;

(e) Measures taken by the State party to strengthen migration regulation and control mechanisms to ensure that private recruitment agencies abstain from charging excessive fees for their services and from acting as intermediaries for abusive foreign recruiters.

B. Information relating to the articles of the Convention

General principles

9. Please indicate whether the Convention has been directly applied by officials in the administration and/or invoked directly before the courts. If so, please provide examples. Please also provide information on:

(a) Judicial and/or administrative mechanisms competent to examine and decide on complaints by migrant workers and members of their families, including migrant workers in an irregular situation;

(b) The number and type of complaints examined by such entities since the date of entry into force of the Convention for the State party, and their outcomes;

(c) The possibility for migrant workers to access legal and judicial assistance in this context;

(d) Any redress, including compensation, provided to the victims of such violations; and

(e) Any measures taken to inform migrant workers and members of their families about the remedies available to them for violations of their rights.

Part II of the Conveation

Article 7

10. Please indicate whether national legislation, in particular the Constitution and the Labour Code, guarantees that all migrant workers and members of their families within the State party's territory or subject to its jurisdiction enjoy the rights provided for in the Convention, without distinction of any kind, and whether it covers all the prohibited grounds for discrimination set forth in article 1, paragraph 1, and article 7 of the Convention, such as sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status. Please also provide detailed information on the measures taken by the State party to ensure respect for the principle of non-discrimination, in law and in practice. Lastly, please provide information on the access to health and other social services for all migrant workers and members of their families, as well as education for the children of migrant workers, including those in an irregular situation.

Part III of the Convention

Articles 8 to 15

11. Please provide information on measures taken to combat the labour exploitation of migrant workers, including those in an irregular situation and in particular those in the mining and agriculture sectors. Please also provide information on the measures taken to prevent and combat domestic slavery, forced labour, exploitation by begging, exploitation and sexual abuse, especially in the context of sex tourism and the practice of *wahaya* or the "fifth wife", of migrant workers, in particular women and children. Finally, please provide information on the measures taken to harmonize national legislation with the International Labour Organization (ILO) Forced Labour Convention, 1930 (No. 29) and the Abolition of Forced Labour Convention, 1957 (No. 105).

12. Please provide detailed information on the measures taken to investigate allegations of harassment and corruption by some security services and by the immigration authorities at the national and local levels, particularly at borders, and of abuse of power by law enforcement authorities through the use of, for example, arbitrary detention of migrant workers and members of their families. Please specify the number of cases reported, proceedings instituted, officials brought to trial and convictions secured.

Articles 16 to 22

13. Please describe measures in place to ensure due process for migrant workers and members of their families who are under investigation, or are arrested or detained for administrative or criminal offences, including in cases related to immigration, notably with regard to access to legal assistance, interpretation and adequate medical care. In this connection, please state whether the State party has put in place alternatives to the detention of migrant workers, in particular unaccompanied children and families with children. Please state whether measures are in place to allow migrant workers held in this context to exercise their right to an effective remedy enabling them to challenge the legality of administrative decisions relating to their detention, expulsion or refoulement.

14. Please provide information on the detention centres in which migrant workers are placed, and on the conditions of detention, and state, in particular: (a) whether persons detained for immigration-related reasons are systematically separated from ordinary detainees; (b) whether women are separated from men; and (c) whether women detainees are supervised by female guards.

15. Please provide up-to-date information, including disaggregated statistical data, on undocumented and irregular migrant workers and their families who have been expelled or who are subject to deportation proceedings. Please also state whether the State party's national legislation prohibits collective expulsion.

16. Please provide information on measures taken to ensure that:

(a) Migrant workers and members of their families are only expelled from the territory of the State party pursuant to a decision taken by a competent authority following a procedure established by law and in conformity with the Convention, and that this decision can be reviewed on appeal;

(b) Pending such appeals, persons subject to expulsion have the right to request a stay of the expulsion decision, and that such appeals have a suspensive effect.

Article 23

17. Please provide detailed information on the consular services provided by the State party to nationals of the Niger working abroad and members of their families, including those in an irregular situation, and in particular those who are victims of abuse, deprived of their freedom and/or subject to expulsion. Please state whether migrant workers and their families living in the Niger can request the protection and help of the consular or diplomatic authorities of their State of origin in the event of violations of rights recognized under the Convention, particularly in cases of arrest, detention or deportation proceedings. Please provide the Committee with some practical examples or real-life experiences.

Articles 25 to 30

18. Please provide detailed information on the measures taken, including mechanisms for legal protection of the right to work and for enforcement of the law, to safeguard in practice the right of migrant workers to equal treatment, particularly in the agriculture, mining and domestic work sectors, in terms of pay and employment and working conditions (overtime, working hours, weekly rest, paid leave, social security, health, termination of the employment contract, minimum wage, etc.), whether they are in a regular or an irregular situation. Please also indicate whether national laws concerning the level of remuneration and working conditions are in conformity with the ILO Equal Remuneration Convention, 1991 (No. 100) and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

Articles 31 to 33

19. Please provide information on measures taken to ensure that, during and upon termination of their stay in the State party, migrant workers and members of their families have the right to transfer their earnings and savings and their personal effects and belongings. Please provide information on measures taken to facilitate the transfer of such funds and in particular to minimize the cost of such transfers.

20. Please describe any measures taken to inform migrant workers transiting through or residing in the Niger, and members of their families, of their rights and obligations in the State party, and to give them access to clear information on immigration procedures, including the conditions governing their admission, stay and any income-generating activities in which they may engage.

Part IV of the Convention

Article 40

21. Please provide information on the legislative measures taken to guarantee migrant workers and members of their families the right to form and participate in the leadership of associations and trade unions, in accordance with article 40 of the Convention.

Articles 43 and 45

22. Please provide information on the measures taken by the State party, including legislation, to ensure that migrant workers and members of their families enjoy equality of treatment with nationals regarding access to educational and/or vocational training institutions and services, health services, housing and cultural life. Please also provide information on the measures taken by the State party to encourage the integration of children of migrant workers in the national education system.

Articles 46 to 48

23. Please state whether prevailing laws and the measures in place to enforce compliance with those laws allow migrant workers, when they leave the territory of the State party, to continue receiving the social benefits and allowances for which they have paid contributions. Please also provide information on the legal framework for guaranteeing the right of migrant workers to move their earnings and savings from the State of employment to the State of origin, and on measures taken to reduce the cost of remittances sent by nationals of Niger working abroad to the State party in order to encourage the use of formal channels. Please also indicate whether the State party has concluded bilateral or multilateral agreements permitting the transfer of family allowances meant for children of migrant workers not residing in the State party.

Article 49

24. According to the information received, national legislation requires separate residence and work permits, with work permits issued only on presentation of a contract of employment endorsed by the Ministry of Labour. Please state whether migrant workers can be sure of receiving a residence permit valid for at least the period during which they are authorized to engage in paid employment. Please also provide information on measures taken to ensure that migrant workers in the State party are allowed to freely choose their remunerated activity without being regarded as in an irregular situation, and that they retain their residence permit if their remunerated activity terminates prior to the expiration of their work permit or similar authorization. Lastly, please provide information on measures taken to ensure that they are allowed to keep their residence permit at least for a period corresponding to that during which they may be entitled to unemployment benefits.

Articles 51 and 52

25. The Committee notes that Decree No. 87-36 of 12 March 1987 lists professional activities prohibited or subject to authorization for foreigners. Please provide additional information on that legislative provision and any other issued in the State party with a view to restricting access to certain job categories, and specify the types of activities involved. Please also state the conditions for obtaining authorization to engage in paid work, the types of work covered and the numbers of permits granted during the past five years, as well as the number of applications rejected and the reasons for rejection.

Article 54

26. Please provide information on measures taken by the State party to ensure that migrant workers enjoy equality of treatment with nationals of the Niger in respect of protection from dismissal, unemployment benefits, access to public work schemes for combating unemployment and access to alternative employment in the event of loss of work or termination of other remunerated activity.

Part V of the Convention

Article 59

27. The Committee notes the prevalence of circular and temporary migration by nationals of the Member States of the Economic Community of West African States to cover labour shortages in neighbouring countries. Please provide information on the measures taken by the State party to ensure that seasonal or temporary workers benefit from treatment equal to that of national workers.

Part VI of the Convention

Articles 64 to 68

28. Please indicate whether the State party has undertaken consultations and ratified agreements on cooperation with other States parties, particularly countries of origin, transit and destination, with a view to promoting sound, equitable and humane conditions in connection with international migration of workers and members of their families. If so, please provide detailed information. Please also indicate to what extent these agreements meet the social, economic and cultural needs of migrant workers and members of their families and provide information on the consequences of these migrations on the communities concerned.

29. Please indicate the measures taken by the State party to ensure that the rights of migrant children, in particular those who are unaccompanied and/or in an irregular situation or are transiting through the State party, are respected and that they are protected from all forms of economic exploitation. Please indicate the measures taken or envisaged by the State party to protect children against the worst forms of labour, including through the implementation of the ILO Worst Forms of Child Labour Convention, 1999 (No. 182), and the strengthening of the labour inspection system. Please also describe the measures taken to promote conditions that facilitate the reception and reintegration of migrant children and their families upon their return to the State party.

30. Please describe the measures taken by the State party to prevent and eliminate irregular migration, including of women and unaccompanied children, and particularly measures to effectively detect the movement and illegal or clandestine employment of migrant workers and members of their families. Please also provide information on bilateral and multilateral agreements, policies and programmes aimed at strengthening the regular migration channels and provide relevant responses to the structural causes of irregular migration, such as violence, insecurity, political problems and poverty or vulnerability to natural disasters. Please provide information on prevention campaigns developed by the State party to combat the dissemination of misleading information relating to emigration and immigration, and on the State party's programmes to educate its nationals, including children, about the dangers of irregular migration.

31. According to information received, the number of returns of migrant workers and members of their families to the State party is increasing, in particular because of the increasingly restrictive migration policies of the European States and the growing insecurity

in the countries of North Africa, especially Libya. Please indicate the measures taken or envisaged by the State party, including the conclusion of cooperation agreements between the State party and States of employment, to facilitate the voluntary return of migrant workers and members of their families to their country of origin and to promote proper conditions for resettlement and social and economic reintegration.

32. Please state whether the law makes it possible to punish all individuals, groups or entities that organize, provide or assist in organizing illegal or clandestine movement of migrant workers through or to the State party. In particular, please provide detailed information regarding the scope and the implementation of Order No. 2010-86 of September 2010 on trafficking in persons, as well as the Five-year National Action Plan to Combat Trafficking in Persons adopted in July 2014. Please describe in particular the measures taken or envisaged to address the gradual increase in the number of migrants in an irregular situation in the Niger, notably those in transit, a development stemming from the central role played by the country in regional migration because of its geographical location and the activities of networks organizing illegal emigration from West and Central Africa to other countries, particularly in Northern Africa and Europe.

33. The Committee notes with concern the population displacements caused by the attacks by Boko Haram in northern Nigeria and southern Niger. Please provide information on the consequences of the atrocities committed by Boko Haram on the situation of migrant workers and members of their families in the State party, as well as on that of migrant workers from the Niger and members of their families living abroad, particularly in Nigeria. Please also describe the measures taken by the State party to protect migrant workers and members of their families from the atrocities committed by Boko Haram in the State party.

Article 69

34. Please provide information on measures taken to ensure that migrant workers and members of their families who are in an irregular situation in the State party are given the possibility of regularizing their situation in accordance with article 69 of the Convention. Please also describe the measures taken by the State party, including through bilateral and multilateral agreements, to improve the protection of its nationals abroad, both migrant workers and members of their families, whether in a regular or an irregular situation, in particular in Burkina Faso, Côte d'Ivoire, Nigeria, Libya, Algeria and Morocco, including efforts to promote the regularization of such persons' situations, taking into account the circumstances of their arrival, the length of their residence in the State of employment and other relevant considerations, in particular those related to their family status.

Part II

In this section, the Committee invites the State party to briefly (three pages maximum) provide additional information regarding the protection of all migrant workers and members of their families with respect to:

(a) Bills or laws, and their respective regulations;

(b) Institutions (and their mandates) or institutional reforms;

(c) Policies, programmes and action plans covering migration issues and their scope and financing;

(d) Recent ratifications of human rights instruments, including ILO Convention No. 97 (1949) concerning migration for employment (revised), No. 143 (1975) concerning migrant workers

and No. 189 (2011) concerning decent work for domestic workers;

(e) Recent comprehensive studies on the situation of migrant workers and members of their families.

Part III

Data, official estimates, statistics and other available information

1. Please provide updated disaggregated statistical data and qualitative information for the last three years (unless otherwise specified) on:

(a) The volume and nature of migratory flows in and from the State party for the period since the entry into force of the Convention for the State party;

(b) Migrant workers in detention in the State party and migrant workers who are nationals of the State party and who are detained in the State of employment, and state whether these detentions are immigration-related;

(c) Migrant workers and members of their families that have been expelled by the State party;

(d) The number of non-accompanied migrant children or migrant children separated from their parents in the State party;

(e) Remittances by migrant workers who are nationals of the State party and who are working abroad;

(f) Reported cases of trafficking and smuggling of migrants, investigations, prosecutions, and the sentences imposed on perpetrators (disaggregated by sex, age, nationality and purpose of trafficking);

(g) Legal assistance services provided to migrant workers and members of their families in the State party and to nationals of the State party working abroad or in transit in a third State.

2. Please provide additional information on significant progress made and measures considered by the State party to be a priority to implement the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, including measures envisaged to make the declaration provided for in article 76 of the Convention recognizing the competence of the Committee to receive and consider communications by States parties and/or the declaration provided for in article 77 of the Convention recognizing the competence of the Committee to receive and consider communications from or on behalf of individuals.

The Committee may take up all aspects of the rights of migrant workers and members of their families contained in the Convention during the dialogue with the State party.